OCT 17 1942
CHARLES ELMORE CROPLEY
CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, A. D. 1942.

No. 418

L. METCALFE WALLING, ADMINISTRATOR OF THE WAGE AND HOUR DIVISION, UNITED STATES DEPARTMENT OF LABOR,

Petitioner,

vs.

GOLDBLATT BROS., INC., a corporation,

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

BRIEF FOR THE RESPONDENT IN OPPOSITION

ABRAM N. PRITZKER and
STANFORD CLINTON,
Attorneys for Goldblatt Bros., Inc.,
Respondent.

Rassmann & Miller, 33 N. Market St., Chicago. Franklin 6363

INDEX.

	PAGE
Opinions below	1
Jurisdiction	2
Question presented	2
Statute involved	2
Statement	2
Argument	5
Conclusion	6
Appendix	7

CITATIONS.

Statute:

Fair Labor Standards Act c. 676, 52 Stat. 1060 (29 U. S. C., sec. 201 et seq.) 7

Administrative Regulation:

Title 29, Labor, Chapter 5, Wage and Hour Division, Part 541, Section 541.4, Code of Federal Regulations (published in the Federal Register October 15, 1940) 7

IN THE

Supreme Court of the United States

OCTOBER TERM, A. D. 1942.

No. 418

L. METCALFE WALLING, ADMINISTRATOR OF THE WAGE AND HOUR DIVISION, UNITED STATES DEPARTMENT OF LABOR,

Petitioner,

vs.

GOLDBLATT BROS., INC., a corporation.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

BRIEF FOR THE RESPONDENT IN OPPOSITION

OPINIONS BELOW.

The opinion of the District Court (Tr. 527-535) is reported in 39 F. Supp. 701. The opinion of the Circuit Court of Appeals (Tr. 552-559) is reported in 128 F. (2d) 395.

JURISDICTION.

The judgment of the Circuit Court of Appeals was entered June 25, 1942 (Tr. 560). The jurisdiction of this Court is invoked under Section 240(a) of the Judicial Code, as amended by the Act of February 13, 1925.

QUESTION PRESENTED.

Are any of respondent's employees engaged in commerce or producing goods for commerce within the meaning of Sections 6 and 7 of the Fair Labor Standards Act of 1938?

STATUTE INVOLVED.

The pertinent provisions of the Fair Labor Standards Act are set forth in the Appendix to the petitioner's brief on Pages 13 and 14, with the exception of Section 13(a)(1) of the Act which is set forth in the Appendix hereto.

STATEMENT.

Petitioner's statement of the case is inadequate. Respondent is engaged in the local sale[1] of goods at retail to ultimate consumers in ten retail department stores all located within the local metropolitan commercial area of Chicago. (Tr. 83-84) Respondent's business originated in a single store. (Tr. 228.) As the business developed, respondent needed extra space and acquired the three warehouses

[1] No contention is made by the petitioner that respondent's employees are within the Act on the ground that they are engaged in the making of interstate sales.

here involved, all of which are located in the City of Chicago, at 3932 South Wolcott Avenue, 1927 West Pershing Road, and 39th and Wentworth Avenues.[2] All of these warehouses are used as necessary incidents of respondent's retail business for the buying, receipt and storage of goods. (Amended Answer to Interrogatory I, Tr. 39-44)

While the merchandise purchased by the respondent is usually delivered to the warehouses, frequent deliveries are made directly to the stores. (Tr. 234) Generally, the soft lines such as clothing are handled at Wolcott; hard goods such as furniture at Wolcott; foods at Pershing. (Tr. 84) The company's executive and administrative personnel are also located at the warehouses. (Tr. 108) Slip covers, draperies and comforters are made from finished yard goods solely for respondent's retail customers. (Tr. 91, 237) Foods for respondent's retail customers are prepared at Wentworth. (Tr. 123-4, 185)

Substantial quantities of merchandise are held in the warehouses for delivery after sale directly to purchasers.[3] Servicemen handling, installing and servicing appliances, gas ranges and refrigerators after sale work out of Wentworth. (Tr. 145)

Practically all of the activities carried on at respondent's warehouses were at one time or another carried

---

[2] The warehouses will be here referred to as "Wolcott", "Pershing" and "Wentworth".

[3] This is true of furniture (Tr. 131), draperies (Tr. 130-1), groceries (Tr. 182-3), and bakery and food products (Tr. 183-4). In many instances goods returned by customers are taken to the warehouses (Tr. 133). The statement of petitioner in Footnote 4 on Page 9 of the Petition "When held at respondent's warehouses at all, the goods are held for delivery to the stores and not for 'local sale'" is incorrect.

on or to some extent are still being carried on at respondent's retail stores. (Tr. 170-1, 236-7, 173-4) The activities carried on at the warehouses are commonly carried on by other large retailers either in their warehouses or in their retail stores. (Tr. 171-5, 181)[4]

Respondent's entire business is conducted as a single integrated enterprise. All executive and managerial authority for every phase of the business, both in the selling and non-selling premises, originates from the warehouses. This warehouse supervision of the stores includes such things as kinds and quantities of inventory, selling price, personnel, the physical arrangement of store premises, display of merchandise and deliveries. (Tr. 235, 167-9, 109, 146, 231, 240, 166)

As convenient and efficient operation of the business dictates, and as determined by the central warehouse authority, merchandise is shifted from warehouse to warehouse, warehouse to store, store to warehouse and store to store. (Tr. 132, 184, 237, 147-8) There are similar transfers of employees ranging from individual employees to transfers of entire departments. (Tr. 108, 141, 184, 189, 248)[5] In some instances orders are taken in one store and deliveries made from stock of another. (Tr. 147-148)

---

[4] Job Descriptions for the Retail Trade, a 3 volume publication by the United States Employment Service of the United States Department of Labor, published in April of 1938. The publication describes retail processing operations as merchandising servicing. Volume 2, Page 261, et seq. See also Vol. 1, Introduction, Page XXXI.

[5] In the winter of 1940 about two years after the adoption of the Act, a large group of office employees was transferred from the State Street store to Wolcott (Tr. 108, 348).

ARGUMENT.

The request for certiorari is premature. Since the District Court, on its own motion, dismissed the complaint at the conclusion of the petitioner's evidence (Tr. 544-545), respondent has not yet had the opportunity of introducing its evidence. As a result, if the Court grants certiorari at this time, it will be deciding the interstate activities of respondent's employees on an incomplete, and therefore inaccurate, record.

In view of the fact that the judgment of the Circuit Court of Appeals remands the case, requiring the respondent to proceed (Tr. 560), we think the proper course is to withhold the granting of certiorari until respondent's evidence in explanation and in contradiction of the evidence introduced by the petitioner is before the Court. No useful purpose can be served by determining piecemeal whether any of respondent's employees are covered by the Act.[6]

Furthermore, it is respondent's position that the restricted and limited application of the Commerce language in the Act, as applied to employees of retailers, can best be understood in the light of the evidence respondent will offer in support of its contention that its employees are, in any event, exempt under Section 13(a)(1) as being

[6] Respondent, of course, maintains that none of its employees is engaged in commerce or producing goods for commerce within the meaning of the Fair Labor Standards Act of 1938. Hence, if certiorari should be granted, respondent will maintain that the Circuit Court of Appeals erred to the extent that it reversed the judgment of the District Court.

engaged in a local retailing capacity, and under Section 13(a)(2) as being employees of a retail establishment "the greater part of whose selling * * * is in intrastate commerce."

In short, while it may be true that ultimately the significance of the issues involved here requires final adjudication by this Court, such adjudication should be withheld until this Court can intelligently consider the application of the Act to the employees of respondent in the light of a complete record.

CONCLUSION.

The petition should be denied.

Respectfully submitted,

ABRAM N. PRITZKER and
STANFORD CLINTON,
Attorneys for Goldblatt Bros., Inc.,
Respondent.